

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARVIN HARRIS,

Plaintiff,

v.

GROUND, et al.,

Defendants.

Case No.: C 14-1643 CW (PR)

ORDER OF DISMISSAL WITH LEAVE
TO AMEND AND DIRECTING COURT
CLERK TO PROVIDE PLAINTIFF WITH
BLANK CIVIL RIGHTS FORM

INTRODUCTION

Plaintiff, a state prisoner incarcerated at Salinas Valley State Prison (SVSP), has filed a pro se civil rights action pursuant to 42 U.S.C. § 1983, alleging the violation of his constitutional rights by employees at SVSP. His motion for leave to proceed in forma pauperis is granted in a separate order.

DISCUSSION

I. Legal Standard

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. Id. § 1915A(b)(1), (2). Pro se pleadings must be liberally construed. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

To state a claim under 42 U.S.C. § 1983, a plaintiff must

1 allege two essential elements: (1) that a right secured by the
2 Constitution or laws of the United States was violated, and
3 (2) that the alleged violation was committed by a person acting
4 under the color of state law. West v. Atkins, 487 U.S. 42, 48
5 (1988).

6 Liability may be imposed on an individual defendant under 42
7 U.S.C. § 1983 if the plaintiff can show that the defendant's
8 actions both actually and proximately caused the deprivation of a
9 federally protected right. Lemire v. Cal. Dept. Corrections &
10 Rehabilitation, 726 F.3d 1062, 1074 (9th Cir. 2013); Leer v.
11 Murphy, 844 F.2d 628, 634 (9th Cir. 1988); Harris v. City of
12 Roseburg, 664 F.2d 1121, 1125 (9th Cir. 1981). A person deprives
13 another of a constitutional right within the meaning of
14 § 1983 if he does an affirmative act, participates in another's
15 affirmative act or omits to perform an act which he is legally
16 required to do, that causes the deprivation of which the plaintiff
17 complains. Leer, 844 F.2d at 633. Under no circumstances is
18 there respondeat superior liability under § 1983. Lemire, 726
19 F.3d at 1074. Or, in layman's terms, under no circumstances is
20 there liability under § 1983 solely because one is responsible for
21 the actions or omissions of another. Taylor v. List, 880 F.2d
22 1040, 1045 (9th Cir. 1989); Ybarra v. Reno Thunderbird Mobile Home
23 Village, 723 F.2d 675, 680-81 (9th Cir. 1984). A supervisor may
24 be liable under § 1983 upon a showing of (1) personal involvement
25 in the constitutional deprivation or (2) a sufficient causal
26 connection between the supervisor's wrongful conduct and the
27 constitutional violation. Henry A. v. Willden, 678 F.3d 991,
28 1003-04 (9th Cir. 2012) (citing Starr v. Baca, 652 F.3d 1202, 1207
(9th Cir. 2011)).

1 II. Plaintiff's Allegations

2 The complaint alleges that Defendants have written false
3 reports regarding several of Plaintiff's criminal convictions and
4 Plaintiff's psychological symptoms. The complaint also alleges
5 that Plaintiff is being served bad food such as mushrooms and
6 onions, bell peppers and turkey sausage, pears and rice krispies.
7 Plaintiff also alleges that he was deprived of his property, but
8 does not specify the property or who took it.

9 These sparse allegations are insufficient to state a
10 cognizable claim for relief.

11 Allegations of lying and making false statements constitute
12 state law claims for defamation, libel and slander that are not
13 cognizable as civil rights claims under section 1983. See Cornejo
14 v. County of San Diego, 504 F.3d 853, 855 n.3 (9th Cir. 2007);
15 Freeman v. Arpaio, 125 F.3d 732, 738 (9th Cir. 1997) (recognizing
16 that verbal harassment and abuse fail to state a claim cognizable
17 under 42 U.S.C. § 1983), overruled in part on other grounds by
18 Shakur v. Schriro, 514 F.3d 878, 884-85 (9th Cir. 2008).

19 Therefore, any claims based making false statements, either
20 verbally or in writing, are dismissed. Dismissal is with leave to
21 amend for Plaintiff to allege a constitutional violation, if he
22 truthfully can do so.

23 Plaintiff's allegations that he is being served "bad" food do
24 not state a claim for relief. There may be a claim for deliberate
25 indifference to Plaintiff's serious medical needs that could be
26 based on such allegations but it would require additional
27 allegations that Plaintiff was allergic to certain foods or was on
28 a health-related diet that did not include these foods, that
defendants knew these facts, but served him the offending food

1 anyway. Therefore, any claim based on the food Plaintiff was
2 served is dismissed with leave to amend.

3 Plaintiff has also not stated a cognizable claim based on
4 being deprived of his unspecified property. The Takings Clause of
5 the Fifth Amendment provides that "private property [shall not] be
6 taken for public use without just compensation." U.S. Const.
7 amend. V. It applies to the states through the Due Process Clause
8 of the Fourteenth Amendment. Schneider v. California Dep't Of
9 Corrections, 151 F.3d 1194, 1198 (9th Cir. 1998). To state a
10 claim under the Takings Clause, a plaintiff must first demonstrate
11 a constitutionally protected property interest. Ward v. Ryan, 623
12 F.3d 807, 810 (9th Cir. 2010); see Schneider, 151 F.3d at 1201
13 (California prisoners have a constitutionally protected property
14 interest in any interest earned on funds deposited in their Inmate
15 Trust Accounts). However, because Plaintiff's allegations do not
16 specify the property that was taken, who took it and under what
17 circumstances, they fail to state a claim for relief.

18 CONCLUSION

19 For the foregoing reasons, the Court orders as follows:

20 1. Plaintiff's claims based on false reports, bad food and
21 the taking of his property are dismissed with leave to amend.

22 2. Within twenty-eight (28) days from the date of this
23 Order, Plaintiff may, but is not required to, file an amended
24 complaint to cure the deficiencies noted above, if he truthfully
25 can do so. Plaintiff shall use the court's civil rights complaint
26 form, a copy of which is provided herewith, and include in the
27 caption both the case number of this action, No. C 14-1643 CW
28 (PR), and the heading "AMENDED COMPLAINT." Because an amended
complaint completely replaces the original complaint, Plaintiff

1 must include in it all the claims he wishes to present. See
2 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992).

3 Plaintiff may not incorporate material from the original complaint
4 by reference. Failure to amend within the designated time will
5 result in the dismissal of this case.

6 3. It is Plaintiff's responsibility to prosecute this case.
7 Plaintiff must keep the Court informed of any change of address by
8 filing a separate paper with the Clerk headed "Notice of Change of
9 Address," and must comply with the Court's orders in a timely
10 fashion. Failure to do so may result in the dismissal of this
11 action for failure to prosecute pursuant to Federal Rule of Civil
12 Procedure 41(b).

13 4. The Clerk of the Court shall provide Plaintiff with a
14 blank civil rights complaint form.

15 IT IS SO ORDERED.

16 Dated: 6/5/2014

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18 CLAUDIA WILKEN
19 UNITED STATES DISTRICT JUDGE
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